United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Taylor

Opposition No. 91123312

Intel Corporation

v.

Steven Emeny

Before Walters, Chapman, and Kuhlke,
Administrative Trademark Judges.

By the Board:

Steven Emeny (pro se) seeks to register the mark IDEAS INSIDE for a "computerized on line ordering service … (featuring the wholesale and retail distribution of a wide variety of goods, e.g., books, music, motion pictures, and clothing)" in Class 35; "electronic direct digital transmission of messages and data via computer terminals" in Class 38; and "computer services, namely, providing on line search engines for obtaining data on a global computer network" in Class 42.[1]

Intel Corporation, in its amended notice of opposition,[2] alleges as grounds for opposition priority of

[1] Application Serial No. 75825218 filed November 5, 1999, and based on applicant's assertion of a bona fide intention to use the mark in commerce.

[2] The amended notice of opposition was accepted by Board order dated March 11, 2003.

use and likelihood of confusion; and that applicant lacked a bona fide intention to use its involved IDEAS INSIDE mark on the specified services at the time he filed his involved application.

This case now comes up for consideration of opposer's motion for summary judgment on the sole ground that applicant "lacks a bona fide intent to use the subject mark IDEAS INSIDE in U.S. commerce." Applicant filed a brief in opposition to the motion.

Opposer acknowledged that it filed its motion for summary judgment during its testimony period as last reset. Pursuant to Trademark Rule 2.127(e)(1), a motion for summary judgment should be filed prior to the commencement of the first testimony period, as originally set or as reset.

In inter partes proceedings before the Board, the trial period commences with the opening of the first testimony period, testimony is taken out of the presence of the Board, and it is the policy of the Board not to read trial testimony or examine other trial evidence prior to final decision (see TBMP §502.01 (2d. ed. rev. 2004), and cases cited therein). For these reasons, the Board, in its discretion, may deny as untimely any summary judgment motion filed thereafter. *See Blansett Pharmaceutical Co. v. Carmrick Laboratories Inc.*, 25 USPQ2d 1473 (TTAB 1992); *Von Schorlemer v. Baron Herm. Schorlemer Weinkellerei GmbH*, 5

USPQ2d 1376 (TTAB 1986); and *La Maur, Inc. v. Bagwells Enterprises, Inc.*, 193 USPQ 234 (Comm. 1976). Herein, opposer filed its motion for summary judgment on January 4, 2005, one day prior to the close of its reset testimony period.

Under these circumstances, opposer's motion for summary judgment is untimely. We are not persuaded by opposer's arguments that its motion is timely filed inasmuch as it was filed in contravention to Trademark Rule 2.127(a).

In view thereof, opposer's motion for summary judgment is denied.

We turn now to opposer's motion, contained within its motion for summary judgment, to extend its testimony period. In its motion, opposer requests a thirty-day extension of its testimony period "to enter its testimony in the matter and appropriately supplement the record," in the event that its motion for summary judgment is denied.

In response, applicant argues that the Board should not reset any dates, as opposer, Intel Corporation, has had close to four years to pursue its opposition.

In reply, opposer contends that it would be reasonable for the Board to grant opposer an additional thirty days to "supplement" its testimony because opposer's testimony period was open at the time it filed its motion for summary judgment, and "it made sense to wait for the Board's ruling

before investing additional time and expense to collect and submit evidence."

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP §509 (2d ed. rev. 2004). Moreover, and as specifically stated under Trademark Rule 2.121, if a motion to extend is denied, dates may remain as originally set or as reset.

As an initial observation, opposer's sparse motion contains very little information upon which the Board can find good cause. *See HKG Industries, Inc. v. Perma-Pipe, Inc.,* 49 USPQ2d 1156, 1158 (TTAB 1998). In this case, opposer relies solely on the fact that its testimony period was already open when it filed its untimely motion for summary judgment to support its motion to extend. We find this argument misplaced. Simply put, opposer's filing of an untimely motion for summary judgment does not constitute good cause for extending testimony periods.

In view of the foregoing, opposer's motion to extend its testimony period is denied. As previously stated, when the Board denies a motion to extend, dates may remain as set (or reset). Here, we can find no reason to change the dates as reset in the Board order dated October 7, 2004 and,

consequently, opposer's testimony period expired on January 5, 2005.[3]

Proceedings herein are resumed and trial dates, commencing with applicant's testimony period, are reset as indicated below.

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	CLOSED
30-day testimony period for party in position of defendant to close:	November 5, 2005
15-day rebuttal testimony period for party in position of plaintiff to close:	December 20, 2005

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

Briefs shall be filed in accordance with Trademark Rule 2.l28(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

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[3] The Board notes that opposer filed a supplemental notice of reliance, subsequent to its filing of its motion for summary judgment, on January 5, 2005. Opposer had also filed a notice of reliance on December 3, 2002. (Applicant had filed a notice of reliance on February 10, 2003.)